

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JODY JOHNSON, *et al.*,

Plaintiffs,

vs.

Civ. No. 99-00348 MV/WWD-ACE

CITY OF HOBBS, a municipality,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendant City of Hobbs' Motion to Strike Plaintiff and the Class of All African-American Residents of Hobbs' Reply to Defendant's Response to Plaintiffs' Motion for Sanctions and Further Relief to Obtain Compliance with the Stipulated Agreement; Lamond Alexander's Reply to Defendant's Response to Motion by Plaintiff Lamond Alexander for Sanctions, Further Relief and Modification of Settlement Agreement; and Plaintiff's Reply to Defendant's Response to Plaintiffs' Motion to Replace Clarence Chapman as Monitor to Obtain Compliance with the Stipulated Agreement, filed September 15, 2003, [**Doc. No. 162**].¹ The Court, having considered the motion, briefs, relevant law and being otherwise fully informed, finds that the motion will be **GRANTED in part**.

On February 6, 2003, Plaintiff Lamond Alexander filed a Motion for Sanctions and

¹ In an Order entered concurrently, the Court denied Plaintiffs' Motion to Replace Clarence Chapman as Monitor to Obtain Compliance with the Stipulated Agreement. Consequently, Defendant's Motion to Strike Plaintiff's Reply to Defendant's Response to Plaintiffs' Motion to Replace Clarence Chapman as Monitor to Obtain Compliance with the Stipulated Agreement is moot.

Further Relief and Modification of Settlement Agreement. On February 7, 2003, Plaintiffs and the Class of All African-American Residents of Hobbs filed a Motion for Sanctions and Further Relief to Obtain Compliance with the Stipulated Agreement. Over three months after Plaintiffs filed their reply briefs in support of these motions, Defendant filed the instant motion asserting that Plaintiffs improperly waited until their reply briefs to submit evidence in support of the factual allegations made in Plaintiffs' motions. Defendant requests that the Court strike Plaintiffs' replies, including the attached exhibits, or, in the alternative, grant Defendant leave to file surreply briefs to address the new evidence attached to, and the new arguments raised in, Plaintiffs' reply briefs. Plaintiffs assert that the reply briefs and exhibits are proper rebuttal to issues raised in Defendants' response briefs.

Local Rule 7.5(b) requires a moving party to submit evidence supporting the factual allegations in a motion. D.N.M.LR-Civ.7.5(b). It appears that Plaintiffs did fail to submit certain supporting evidence until their reply briefs. Given the amount of time that has elapsed since the filing of Plaintiffs' motions and the impending expiration of the settlement agreement between the parties that is the subject of the pending motions, the Court will not further delay resolution of the issues raised in Plaintiffs' motions by striking the reply briefs. Defendant, however, will be permitted to file surreply briefs responding to any new evidence submitted with, or arguments made in, Plaintiffs' reply briefs.

IT IS THEREFORE ORDERED that Defendant City of Hobbs' Motion to Strike Plaintiff and the Class of All African-American Residents of Hobbs' Reply to Defendant's Response to Plaintiffs' Motion for Sanctions and Further Relief to Obtain Compliance with the Stipulated Agreement; Lamond Alexander's Reply to Defendant's Response to Motion by

Plaintiff Lamond Alexander for Sanctions, Further Relief and Modification of Settlement Agreement; and Plaintiff's Reply to Defendant's Response to Plaintiffs' Motion to Replace Clarence Chapman as Monitor to Obtain Compliance with the Stipulated Agreement, filed September 15, 2003, [**Doc. No. 162**] is **GRANTED in part**. Defendant may file surreply briefs responding to any new legal arguments made in, and any new evidence attached to, Plaintiff and the Class of All African-American Residents of Hobbs' Reply to Defendant's Response to Plaintiffs' Motion for Sanctions and Further Relief to Obtain Compliance with the Stipulated Agreement and Lamond Alexander's Reply to Defendant's Response to Motion by Plaintiff Lamond Alexander for Sanctions, Further Relief and Modification of Settlement Agreement. Defendant's surreply briefs must be filed within 14 days of the date of this Order.

Dated this 6th day April, 2004.



MARTHA VAZQUEZ
U. S. DISTRICT COURT JUDGE

Attorney for Plaintiffs:

Richard Rosenstock, Esq.
Daniel Yohalem, Esq.

Attorney for Defendant:

Josh A. Harris, Esq.